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APR 01 2005

TECHNOLOGY CENTER 3600

Naval Undersea Warfare Center
Division Newport Office of Counsel
1176 Howell Street, Code 000C
Bldg 112T
Newport, RI 02841

In re Application of:

Micheal T. Ansay et al

Application No. 10/672,969

Filed: September 29, 2003

For: SUBMARINE AIR BAG LAUNCH ASSEMBLY

**DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on applicant's petition to withdraw the holding of abandonment filed December 22, 2004.

The petition is **DENIED**.

A review of the application file reveals the following. On September 29, 2003, applicant filed a Declaration and Power of Attorney. On pages one and two of the Declaration and Power of Attorney the correspondence address is listed as follows:

Office of Counsel, Bldg 112T
Naval Undersea Warfare Center
Division, Newport
1176 Howell Street
Newport, RI 02841-1708

On April 2, 2004 a first Office action rejection was mailed to the above-noted address, setting a three-month shortened statutory period for response. Since no response was received before the end of the six-month statutory period for response, the application became abandoned on October 3, 2004, and a Notice to that effect was mailed on December 6, 2004.

Applicant has filed the present petition to withdraw the holding of abandonment. Petitioner claims that the April 2, 2004 was not received. Petitioner further contends that the application was not properly associated with the applicant's customer number. Thus, according to applicant the April 2, 2004 Office action was mailed to the incorrect address.

Review of the file reveals that applicant submitted a change of address on September 23, 2004 well after the Office action mail date of April 2, 2004. Thus, petitioner's evidence of non-receipt of the Office action mailed April 2, 2004 is insufficient to withdraw the holding of abandonment, and the petition is **DENIED**.

There is a strong presumption that an Office communication **properly addressed and delivered to the United States Postal Services**, was in fact delivered to the addressee. An

allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The petitioner has not complied with the requirements (2) and (3) above. However, the office received the Change of Correspondence Address associated with applicant's customer number after the mail date of the Office action dated April 2, 2004. The Office action of April 2, 2004 was properly addressed to the correspondence address of record. Therefore, the application was properly abandoned, and the holding of abandonment will not be withdrawn.

1156 OG 53 does not apply to applicant's petition for withdraw of the holding of abandonment

For these reasons, applicant's petition to withdraw the holding of abandonment is **DENIED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute;(2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable.

Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.



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SNM/jwk: 03/22/05